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In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. ~~961~~ 105

LAVERNE SLAGLE,
OLGA PERRY,
ROSE MLADAJAN,
EULA ANN COOPER,
PAUL BOHUS,
Appellants,

vs.

STATE OF OHIO,
Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO.

JURISDICTIONAL STATEMENT.

THELMA C. FURRY,
815 Second National Bldg.,
Akron 8, Ohio,
Attorney for Appellants.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-9647



TABLE OF CONTENTS.

(a) Opinions 1

(b) Jurisdiction 2

Cases believed to sustain the jurisdiction 2

The State Statutes involved 3

(c) Questions Presented by This Appeal 5

(d) Statement of the Case 7

Questions contained in indictment of LaVerne Slagle 8

Questions contained in indictment of Paul Bohus 8

Questions contained in indictment of Olga Perry 9

Questions contained in indictment of Eula Ann Cooper 10

Questions contained in indictment of Rose Mladajan 11

Stages in the proceedings and manner in which federal questions were raised 12

(e) The Federal Questions Are Substantial 15

APPENDICES:

A. Opinion of the Court of Appeals of Stark County, Ohio 18

B. Decision of the Court of Common Pleas of Stark County, Ohio 21

C. Judgment of the Supreme Court of Ohio 28

TABLE OF AUTHORITIES.

Cases.

Emspak v. United States, 349 U. S. 190 3

Flaxer v. United States, 358 U. S. 147 3

Johnson v. United States, 318 U. S. 189 3

Knapp v. Schweitzer, 357 U. S. 371 3

Lanzetta v. New Jersey, 306 U. S. 451 3

NAACP v. Alabama, 357 U. S. 449 3

Pennsylvania v. Nelson, 350 U. S. 497 3

Quinn v. United States, 349 U. S. 155 3

Raley v. State of Ohio and *Morgan v. State of Ohio*, 360 U. S. 423 ..... 2, 14, 15, 16

Scull v. Virginia, 359 U. S. 344 3

Sorrells v. United States, 287 U. S. 435 3

Sweezy v. New Hampshire, 354 U. S. 234 ..... 2, 15

United States v. Cardiff, 344 U. S. 174 3

Watkins v. United States, 354 U. S. 178 ..... 2, 15

Constitutions.

Constitution of the United States:

1st Amendment 6

5th Amendment 6, 14

14th Amendment 5, 6

Constitution of Ohio, Art. I, Sec. 10 14

Statutes:

28 U. S. C. 1257(2) 2

Ohio Revised Code:

Sec. 101.44 ..... 4, 6
Sec. 103.34 ..... 3, 5
Sec. 2705.02 2
Sec. 2705.03 4
Sec. 2705.05 4

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Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO.

JURISDICTIONAL STATEMENT.

(a) OPINIONS.

The Supreme Court of Ohio did not deliver an opinion. The opinion of the Court of Appeals for the Fifth District of Ohio is attached in Appendix "A." The opinion of the trial judge of the Court of Common Pleas of Stark County, Ohio, is attached in Appendix "B." Neither of the opinions has been reported. Copy of the Order and Judgment appealed from is attached as Appendix "C," also reported in 170 O. S. 216.

(b) JURISDICTION.

(i) This is an appeal pursuant to 28 U. S. C. 1257(2) from a final order made and entered in the Supreme Court of Ohio, affirming the judgment of the Court of Appeals for the Fifth District of Ohio which affirmed the convictions of appellants in the Court of Common Pleas of Stark County, Ohio, of contempt in violation of Ohio Revised Code Section 2705.02 (formerly Ohio General Code Section 12137) for refusing to answer certain questions propounded to them by the Un-American Activities Commission of Ohio.

(ii) The Supreme Court of Ohio entered its judgment and order from which review is sought on December 23, 1959. Appellants' Application for Rehearing was denied on January 13, 1960. Notice of Appeal was filed in the Supreme Court of Ohio on April 11, 1960.

(iii) It is believed that section 1257, subdivision 2 of Title 28 of the Federal Code confers jurisdiction of the appeal on this Court:

> "1257. State Courts—Appeal—Certiorari—Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * *
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

(iv) **Cases believed to sustain the jurisdiction:**

Raley v. Ohio, 360 U. S. 423;
Sweezy v. New Hampshire, 354 U. S. 234;
Watkins v. United States, 354 U. S. 178;

Pennsylvania v. Nelson, 350 U. S. 497;
NAACP v. Alabama, 357 U. S. 449;
Scull v. Virginia, 359 U. S. 344;
Knapp v. Schweitzer, 357 U. S. 371;
Quinn v. United States, 349 U. S. 155;
Emspak v. United States, 349 U. S. 190;
Sorrells v. United States, 287 U. S. 435, 442;
Lanzetta v. New Jersey, 306 U. S. 451;
United States v. Cardiff, 344 U. S. 174;
Johnson v. United States, 318 U. S. 189, 197;
Flaxer v. United States, 358 U. S. 147, 151.

(v) **The State Statutes involved:**

Ohio Revised Code section 103.34. "The (Un-American activities) commission shall have the power and duty

(1) to investigate, study and analyze

(a) all facts relating to the activities of persons, groups, and organizations whose membership includes persons who have as their objective or may be suspected of having as their objective the overthrow or reform of our constitutional governments by fraud, force, violence, or other unlawful means;

(b) all facts concerning persons, groups and organizations, known to be or suspected of being dominated by or giving allegiance to a foreign power or whose activities might adversely affect the contribution of this state to the national defense, the safety and security of this state, the functioning of any agency of the state or national government or the industrial potential of this state;

(c) the operation and effect of the laws of this state, of the several other states, and of the United States, which purport to outlaw and control the activities enumerated above and to recommend such additional legislation or revision of existing laws as may seem advisable and necessary;

(2) To maintain a liaison with any agency of the federal, state or local governments in devising and promoting means of disclosing those persons and groups who seek to alter or destroy the government of this state or of the United States by force, violence, intimidation, sabotage or threats of the same.

In addition thereto the commission shall have such additional rights, duties and powers as may be necessary to enable it fully to exercise those specifically set forth herein and to accomplish its lawful objectives and purposes."

Ohio Revised Code, section 101.44. "Testimony before committee not to be used in criminal prosecution of witness; exception.

Except as to a person who, in writing, requests permission to appear before such committee or subcommittee or who, in writing waives the rights, privileges and immunities granted by this section, the testimony of a witness examined before a committee or sub-committee shall not be used as evidence in a criminal proceeding against him, nor shall a person be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing, concerning which he so testifies, or produces evidences, documentary or otherwise; but nothing herein shall exempt a witness from the penalties of perjury."

Ohio Revised Code, section 2705.03. Hearing.

"In cases under section 2705.02 of the Revised Code, a charge in writing shall be filed with the clerk of the court, an entry thereof made upon the journal, and an opportunity given to the accused to be heard, by himself or counsel. This section does not prevent the court from issuing process to bring the accused into court, or from holding him in custody, pending such proceedings."

Ohio Revised Code, section 2705.05. Trial.

"Upon the day fixed for the trial in a contempt proceeding the court shall investigate the charge, and hear

any answer or testimony which the accused makes or offers.

"The court shall then determine whether the accused is guilty of the contempt charge. If it is found that he is guilty, he may be fined not more than five hundred dollars or imprisoned not more than ten days, or both."

(c) QUESTIONS PRESENTED BY THIS APPEAL.

1. Whether Section 103.34 of the Revised Code of Ohio creating the power and duties of the Ohio Un-American Activities Commission is unconstitutional because it legislates in an area and authorizes legislative investigation in an area in which United States Congressional action has preempted and superseded the power of the state.

2. Whether the statutes involved, as interpreted and applied by the Supreme Court of Ohio, under which appellants were convicted of contempt for refusing to answer certain questions propounded to them by the Un-American Activities Commission of Ohio, were in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that appellants were not directed by said Commission to answer such questions following appellants' assertion of their privilege against self-incrimination.

3. Whether the statutes involved, as interpreted and applied by the Supreme Court of Ohio, under which appellants were convicted of contempt for refusing to answer certain questions propounded to them by the Un-American Activities Commission of Ohio, were in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that although appellants were advised by said commission that they were entitled to their privilege against self-incrimination said Court held that under the State

immunity statute, Ohio Revised Code Section 101.44, appellants were not entitled to such privilege.

4. Whether the statutes involved, as interpreted and applied by the Supreme Court of Ohio, under which appellants were convicted of contempt for refusing to answer certain questions propounded to them by the Un-American Activities Commission of Ohio, were in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that the State immunity statute, Ohio Revised Code Section 101.44, under which appellants were denied their privilege against self-incrimination does not grant immunity from prosecution by the United States or other States.

5. Whether the statutes involved, as interpreted and applied by the Supreme Court of Ohio, under which appellants were convicted of contempt for refusing to answer certain questions propounded to them by the Un-American Activities Commission of Ohio, were in violation of the privilege against self-incrimination clause of the Fifth and Fourteenth Amendments to the Constitution of the United States for the reason that the State immunity statute, Ohio Revised Code Section 101.44, under which appellants were denied their privilege against self-incrimination does not grant immunity from prosecution by the United States or other States.

6. Whether the statutes involved, as interpreted and applied by the Supreme Court of Ohio, under which appellants were convicted of contempt for refusing to answer certain questions propounded to them by the Un-American Activities Commission of Ohio, were in violation of the freedom of speech and assembly clauses of the First and Fourteenth Amendments to the Constitution of the United States for the reason that said commission was authorized

to investigate, and the appellants were asked questions concerning, their beliefs, opinion, activities, affiliations and discussions.

7. Whether the statutes involved as interpreted and applied by the Supreme Court of Ohio, under which appellants were convicted of contempt for refusing to answer certain questions propounded to them by the Un-American Activities Commission of Ohio, is unconstitutional because it grants the state power to compel disclosure of matters interconnected with the protected freedoms of speech and assembly.

8. Whether the statutes involved as interpreted and applied by the Supreme Court of Ohio, under which appellants were convicted is unconstitutional because the grant of authority to the Ohio Un-American Activities Commission is too broad and ill-defined.

(d) STATEMENT OF THE CASE.

(1) On the 21st day of October, 1953, these appellants appeared before the Ohio Un-American Activities Commission in obedience to subpoenas served upon them.

The hearing before said Commission was held in the Stark County Court House in open session.

Each appellant was represented by counsel, and upon advice of counsel each appellant declined (upon constitutional grounds) to answer some of the questions propounded to them; and upon advice of counsel each of the appellants *did answer* some of the questions propounded to them.

On the 24th day of December, 1953, each of the appellants were indicted ten (10) counts each by the Stark County Grand Jury, each count based upon a question that appellant had declined to answer.

Questions contained in indictment of LaVerne Slagle:

#1—Q. Isn't it a fact, that while you were still on campus in 1939, you were the chairman of the Communist-Dominated Peace Mobilization Committee on the Ohio State campus?

#2—Q. Isn't it a fact that you were active in an organization that the Communist Party set up known as the North Side Peace League?

#3—Q. I will ask you if it is not a fact that during 1941 you regularly held Communist party meetings at 105 West Lane Ave., Columbus?

#4—Q. Are you acquainted with Benjamin Davis?

#5—Q. I will ask you, if it is not a fact that in July of 1944, you were elected Secretary of the Communist Party Political Association?

#6—Q. Do you know Gus Hall?

#7—Q. I will ask you if it is not a fact that on the 11th of October, 1947, you attended a secret meeting at the Hotel Carter in Cleveland which was called for all U. E. Organizers who were also delegates to the State Communist party convention?

#8—Q. Did you ever attend any Communist party meetings with Herbert Hirschberg?

#9—Q. During 1952, were you assigned by the Communist party in this area to work in the Progressive party?

#10—Q. I will ask you if it is not a fact that you spoke at that time about the treatment that Communist party members were receiving in the United States?

Questions contained in indictment of Paul Bohus:

#1—Q. Now, were you out of the United States at any time during that period?

#2—Q. I will ask you if it is not a fact that on the 26th of June 1935, you did obtain a passport

from the State Department and went to the Soviet Union?

#3—Q. As a matter of fact, on the basis of that passport that you obtained on June 26, 1935, you went to the Soviet Union and attended the International Lenin Institute; isn't that correct?

#4—Q. Do you know William O'Dell Noel?

#5—Q. I ask you if you were taught sabotage and the practical methods of sabotage at the Lenin Institute?

#6—Q. Now in the event your Communist party superiors here in the United States order you to commit sabotage in the event of an uprising on behalf of the Soviet Union, would you commit sabotage for the Soviet Union?

#7—Q. Now, do you recall that back in 1937, the Communist Party for the State of Ohio put out a year book?

#8—Q. Now, the address you gave at that time was 1868 Guernsey Street, Belair [Bellaire], Ohio; did you live at that address?

#9—Q. Did you ever hear of Louis Budenz?

#10—Q. Mr. Bohus, in the event of a shooting war between our country and the Soviet Union, on which side would your sympathies and efforts be?

Questions contained in indictment of Olga Perry:

#1—Q. What is your husband's name?

#2—Q. What are your parents' names?

#3—Q. I will ask you if it is not a fact that in July 1940, you attended a meeting of a communist group, meeting in Columbus, Ohio, under the name of the Ohio Youth Conference?

#4—Q. Have you ever participated in any Communist gatherings here in Canton?

#5—Q. Do you know who Arnold Johnson is?

#6—Q. I state as a fact and ask you to affirm or deny the fact that you attended a meeting held in Cleveland, Ohio, in October 1944.

#7—Q. I will ask you if it is not a fact that on October 3, 1946, you held a meeting of the Communist youth arm, the American Youth for Democracy, in your own home?

#8—Q. Now are you familiar with Gus Hall?

#9—Q. As a matter of fact, she is the present treasurer of the Communist party here in Canton, is she not?

#10—Q. Mrs. Perry, in the event of a shooting war between Soviet Russia and the United States on which side would your sympathies and your efforts be?

Questions contained in indictment of Eula Ann Cooper:

#1—Q. Where did you reside prior to September, 1948?

#2—Q. November 20, 1909, what was your name at the time you were born; what was the name given you on baptism?

#3—Q. Did you ever hear the name Beulah Long?

#4—Q. Were you living in the State of Ohio during that period?

#5—Q. Did you ever live in the City of St. Louis, Missouri?

#6—Q. What is your husband's name, Mrs. Cooper?

#7—Q. Now, did you ever run for public office?

#8—Q. I ask you if it is not a fact that at 3:17 P.M. on April 28, 1948, you filed your declaration of candidacy on this Communist Party Ticket?

#9—Q. Are you married at the present time, Mrs. Cooper?

#10—Q. In the event of a shooting war with Russia, would your sympathies lie with the United States or Russia?

Questions contained in indictment of Rose Mladajan:

#1—Q. I ask you if it is not a fact that on January 12, 1944, you attended a meeting of the 10th Ward Branch of the Communist party held at the Diana Cafe in Canton?

#2—Q. Now do you know of Elizabeth Gourley Flynn?

#3—Q. I will ask you if it is not a fact that in 1946 you signed the nominating petition for the communist party leader of Canton, Carl Gulyate, who was running for County Commissioner at the time?

#4—Q. Did you take any part in the American Slav Conference?

#5—Q. Do you know who Gus Hall is?

#6—Q. Mrs. Mladajan, have you ever been in meetings at the Croatian Hall at any time except in your capacity as an employee?

#7—Q. I ask you if it is not a fact that during 1952 you were assigned by the Summit County section of the Communist Party to work in the Progressive Party in Stark County?

#8—Q. For the fund raising raffle you agreed to furnish cakes which you had baked, isn't that true, Mrs. Mladajan?

#9—Q. Do you know anything about the political situation between the United States and the Soviet Union?

#10—Q. Now do you regard the Communist Party as a subversive and disloyal organization?

On March 19, 1954, the trial court sustained a demurrer of the appellants and dismissed said indictments. Said decision was appealed to the Stark County Court of

Appeals, and on November 2, 1954, the decision of the lower court was reversed and the causes were remanded to said court for further proceedings, according to law. Thereafter the Ohio Supreme Court refused to certify.

The appellants proceeded to trial, having waived their right to jury trial. On the 30th day of March, 1955, the trial court found each of the appellants guilty on various counts of the individual indictments and sentenced each appellant to imprisonment in jail for ten (10) days and to pay a fine of Five Hundred Dollars ($500.00) on each count of which they were convicted; the jail sentences, however, running concurrently and the fines other than the first one being remitted, the trial court suspended execution of sentence and set an appeal bond of One Thousand Dollars ($1,000.00) for each appellant pending the within appeal.

Thereafter to-wit: on May 16, 1958, the Court of Appeals of Stark County affirmed the judgment of the trial court. Upon agreement of counsel the cases were consolidated for appeal to the Supreme Court of Ohio. The Supreme Court of Ohio dismissed the appeal (see Appendix "C"). The application for rehearing was denied.

(ii) **Stages in the proceedings and manner in which federal questions were raised.**

Question 1 (*supra*, p. 5), the statute which created the Commission and under which it was organized to act shows on its face that a primary purpose and power of the Commission was to investigate subversive and seditious activities of both persons and groups. The transcript of the hearing of the Commission which resulted in the indictments for contempt of appellants herein is attached to the Bill of Exceptions and identified as "State's Exhibit "K"—Transcript of Hearing before Ohio un-American Activities

Commission. Said transcript demonstrates that the Commission primarily concerned itself with investigating alleged sedition and suspected Communist seditious activities and subversive organizations. In particular, the transcript throughout shows that each appellant herein was interrogated as to his possible Communist and subversive activities in Ohio and other states and as to his presumed association with others who were allegedly Communists, or had been convicted or indicted under the Smith Act, or had been accused of plotting the overthrow of the federal government by force. Appellants raised this federal question in the Supreme Court of Ohio as Assignment of Error 3(a) (Transcript of Record, p. 14), and again in the Application for Rehearing, paragraph 7 (Transcript of Record, p. 18) which was denied.

As to question 2 (*supra*, p. 5). Transcript of the hearing before the Ohio un-American Activities Commission which is attached to the Bill of Exceptions and identified as "State's Exhibit "K" shows that in only two instances was an appellant confronted with the clear decision of continuing to invoke his privilege or testing his right to such on a contempt proceedings (State's Exhibit "K", re: Olga Perry, pp. 5-8, and re: Eula Ann Cooper, pp. 61-65; 72 and 73). In all other instances the Commission did not press for an answer. The trial court ruled upon this issue (see Appendix "B" attached hereto at page 24). Appellants raised this question in the Supreme Court of Ohio as Assignment of Error 1 (b) (Transcript of Record, p. 14), and again in the Application for Rehearing paragraph 4 (Transcript of Record, p. 17), which was denied.

As to question 3 (*supra*, p. 5). Transcript of the hearing before the Ohio un-American Activities Commission which is attached to the Bill of Exceptions and identified as "State's Exhibit "K" at page 7 the counsel for the

Commission called the first witness's attention to a recent decision by the Common Pleas Court of Franklin County (Ohio) in which the immunity statute was held to apply, and again at page 38 counsel for the commission referred to the same decision when the second witness was being questioned. *But at no time were any of the appellants offered immunity by the commission or by any court in exchange for testimony.* At the time of these hearings the Ohio Supreme Court had not yet handed down its opinion in the *Morgan* and *Raley* cases in which it held that the immunity statute applied and that the privilege granted by the Fifth Amendment of the Federal Constitution and the Ohio Constitution, Article I, section 10 was not available to the witnesses called before the Ohio un-American Activities Commission. The trial court dealt with this issue (see appendix "B" attached hereto, at pp. 24-25). Appellants raised this question as Assignment of Error 1 (c) in the Supreme Court of Ohio (Transcript of Record p. 14), and again in the Application for Rehearing paragraphs 5 and 6 (Transcript of Record pp. 17 and 18) which was denied.

Questions 4 and 5 (*supra* p. 6). It is clear that the state immunity statute does not and could not grant immunity from prosecution by the federal government and other states. It is also clear that the Commission by its legislative mandate was authorized and directed to investigate subversive activities unlawful under federal and other state laws and to transmit incriminating information received to the federal and other state governments. The Supreme Court of Ohio (164 O. S. 539-542) sustained the validity of this statute. Appellants raised this question as Assignment of Error 1(c) in the Supreme Court of Ohio (Transcript of Record p. 14) and again in the Application for Rehearing, paragraphs 5 and 6 (Transcript of Record pp. 17 and 18) which was denied.

As to questions 6, 7, and 8 (*supra*, pp. 6-7). They all come within the holdings and doctrines of *Watkins v. United States*, 354 U. S. 178, and *Sweezy v. New Hampshire*, 354 U. S. 234. These questions were raised in Trial Court and Court of Appeals by briefs and oral argument, and in the Supreme Court of Ohio by Assignment of errors 3(b) (c), 4 and 5 (Transcript of Record, pp. 14-15) and again in the Application for Rehearing paragraph 8 (Transcript of Record, p. 18), which was denied.

(e) THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

The decision in this matter is diametrically opposed to the unanimous decision of the Supreme Court of the United States in *Raley v. State of Ohio*, 360 U. S. 423.

At the time the *Raley* case (*supra*) and its companion case *Morgan vs. Ohio* was pending in this Court there were ninteen other witnesses who had been found guilty of contempt of the Ohio un-American Commission whose cases were held in suspension until after this Court delivered an opinion in *Morgan* and *Raley*. As a result of the decision by this Court in the *Raley* and *Morgan* cases the Court of Appeals in Summit County, Ohio, reversed the conviction of eight of the witnesses; and the Court of Appeals in Franklin County, Ohio reversed the conviction of six of the witnesses. But the Court of Appeals of Stark County, Ohio, refused to reverse the convictions of these five appellants, and the Ohio Supreme Court refused to review the convictions. These appellants informed the Ohio Supreme Court of the fact that the Stark County Court of Appeals decision was in conflict with the decisions of the Court of Appeals in Summit County and Franklin County, and contrary to the decision of this Court in oral argument and in Application for Rehearing, paragraphs 2 and 3 (Transcript of Record p. 17).

In *Raley* (*supra*) at page 444 this Court said:

> "The test is whether the witness was commanded to answer regardless. * * *"

Appellants, Slagle, Bohus and Mladajan were not commanded to answer any question contained in their indictment. (State's Exhibit "K" attached to Bill of Exceptions.)

The questions appellants raised in this case throughout the State Courts and which they present to this Court are precisely the same ones that were raised in the *Morgan* and *Raley* cases.

This Court said in *Raley v. Ohio*, 360 U. S. 423, at page 425:

> "The issues tendered by the parties range broadly and involve the power of the Ohio Legislature, in view of existing federal legislation, to investigate activities deemed subversive of the forms of government within the Nation, cf. Pennsylvania v. Nelson, 350 U. S. 497; the power of the State to compel disclosure of matters interconnected with the protected freedoms of speech and assembly, cf. NAACP v. Alabama, 357 U. S. 449; Sweezy v. New Hampshire, supra; the existence of an expressed legislative interest for such an inquiry, and its definition and articulation to the person summoned, cf. Watkins v. United States, supra; Sweezy v. New Hampshire, supra; Scull v. Virginia, 359 U. S. 344; and the effect on testimonial compulsion of state immunity statutes not affording immunity from federal prosecution, cf. Knapp v. Schweitzer, 357 U. S. 371. But our disposition of these cases makes it unnecessary to consider the application of the principles of the cases just cited."

At page 437:

> "Second. We conclude that the judgments of conviction rendered below violate the Due Process Clause of the Fourteenth Amendment, with an exception to

be later noted. We need not decide whether there is demanded of state investigating bodies as explicit a rejection of a claimed privilege against self-incrimination as has been held to be necessary under the statute punishing contempts of Congress. Quinn v. United States, 349 U. S. 155; Emspak v. United States, 349 U. S. 190, 202; Bart v. United States, 349 U. S. 219. Nor need we decide whether it would be a sufficient basis for reversal here simply that the appellants were not given notice of the immunity law at the inquiry, though in analogous contexts we have insisted that state investigators make clear to those before them the basis on which an answer is required. Scull v. Virginia, 359 U. S. 344, 353."

This appeal, therefore, presents extraordinary and substantial constitutional questions which should be ruled upon by this Court.

Respectfully submitted,

THELMA C. FURRY,
815 Second National Bldg.,
Akron 8, Ohio,
Attorney for Appellants.

APPENDIX A.

Opinion of the Court of Appeals of Stark County, Ohio.

May 16, 1958.

PUTNAM, J.

The history of this case is succinctly set forth in the brief of the Plaintiff-Appellee, as follows:

> "The defendants-appellants were indicted separately for contempt of the Un-American Activities Commission, created and organized in accordance with the provisions of Sections 103.31 to 103.38, both inclusive, of the Revised Code, as supplemented by the act of the General Assembly passed on the 1st day of June 1951. By entry of Court, on agreement of counsel, the cases have been consolidated for the purpose of this appeal.
>
> The contempt charged is that the defendants, after having been duly sworn as witnesses before a duly constituted session of the Un-American Activities Commission, which met in the City of Canton, Ohio, on the 21st day of October, 1953, refused to testify in response to certain questions propounded to them.
>
> A Demurrer filed to the indictments was sustained by His Honor, Judge Weber, and the cases were appealed to this Court, Case Nos. 2621, 2622, 2623, 2624 and 2625, and this Court, in an Opinion written by the Honorable Judge McClintock, decided November 2, 1954, held that the Court below committed prejudicial error in sustaining the Demurrer and dismissing the indictments in each of the five cases, and the judgment of said lower court was reversed and the causes were remanded to said court for further proceedings according to law.
>
> Thereafter, the Supreme Court refused to certify, and the defendants waived their right to a jury and elected to be tried by a Judge of the Court in which the indictments were pending. Said trial proceeded before Judge Paul Weber, and on the 30th day of

March 1955, the Court found the defendants guilty on various counts of the individual indictments and sentenced each defendant to imprisonment in jail; for ten (10) days and to pay a fine of Five Hundred Dollars ($500.00) on each count of which they were convicted; the prison sentences, however, running concurrently and the fines other than the first one being remitted."

These cases are now before this Court on appeal by the defendants from that judgment rendered in the court below. They have all been consolidated in Case No. 2684 by agreement and heard together.

While this appeal is designated as one on law and fact, it is actually one upon law only, not being a chancery case, and is so treated by the parties and by the Court.

It is to be noted that this case was filed in this Court early in 1955 and all of the briefs were filed in that year. This case has not heretofore been heard in this Court because of the finding in the Supreme Court of Ohio of the case of *State v. Morgan*, 164 O. S. 529 (decided February 23, 1956) and the appeal of that case to the Supreme Court of the United States, where a decision was made remanding the case to the Supreme Court of Ohio for further consideration, in view of certain decisions of the United States Supreme Court.

Since the Supreme Court of Ohio in this case, upon remand (167 O. S. 295), adhered to its former judgment, this Court has now promptly heard this appeal.

The only argument of the appellants herein, while they filed no supplemental briefs, is that the facts are different than in the *Morgan* case and that the question propounded were not pertinent to the issues. The other arguments in brief of appellants are a rehash of the arguments in the various dissenting opinions in the *Morgan* case in the Supreme Court of Ohio.

We need not be concerned with the latter arguments. While they may or may not be cogent, the majority opinion controls this Court.

A review of this record shows that the facts of this case come squarely within the purview of the facts and decision in the *Morgan* case, *supra*, and we are bound thereby.

The only remaining question before this Court is as to whether or not the questions propounded by the Committee, were pertinent to the issues under investigation. The lower Court said that they were in the instances in which judgment was rendered, and we are in accord with that finding.

There being no error in the record, the judgment is affirmed.

McCLINTOCK, *P.J.* and McLAUGHLIN, *J.* concur.

APPENDIX B.

Decision of the Court of Common Pleas of Stark County, Ohio.

March 30, 1955.

WEBER, *J.*,

The following decisions shall apply generally and individually to each of the above named defendants.

These cases have been submitted to this Court for the first time upon the merits and the evidence and briefs of counsel, each defendant having duly waived a jury trial and having agreed to a joint trial. Each defendant was indicted by a Grand Jury of this County on December 24, 1953, and each indictment contained ten counts of contempt for refusing to testify or answer questions before the Ohio Un-American Activities Commission which met in this County on October 21, 1953.

As to the powers and duties of the Commission, Section 103.34 R. C., says:

"The Un-American activities commission shall:

(A) Investigate, study, and analyze:

(1) All facts relating to the activities of persons, groups, and organizations whose membership includes persons who have as their objective or may be suspected of having as their objective the overthrow or reform of our constitutional governments by fraud, force, violence, or other unlawful means;

(2) All facts concerning persons, groups, and organizations, known to be or suspected of being dominated by or giving allegiance to a foreign power or whose activities might adversely affect the contribution of this state to the national defense, the safety and security of this state, the functioning of any agency of the state or national government, or the industrial potential of this state;

(3) The operation and effect of the laws of this state, of the several other states, and of the United States, which purport to outlaw and control the activities enumerated in this section and to recommend such additional legislation or revision of existing laws as may seem advisable and necessary;

(B) Maintain a liaison with any agency of the federal, state, or local governments in devising and promoting means of disclosing those persons and groups who seek to alter or destroy the government of this state or of the United States by force, violence, intimidation, sabotage, or threats of the same.

The commission has such additional rights, duties, and powers as are necessary to enable it fully to exercise those specifically set forth in this section and to accomplish its lawful objectives and purposes."

As to the powers of the chairman of the Commission with respect to witnesses, Section 103.35 R. C., says in part:

"In case of disobedience on the part of any person to comply with a subpoena issued on behalf of the commission or on the refusal of any person or officer to testify to any matters regarding which he may be lawfully interrogated, or to conform to section 2705.02 of the Revised Code, the chairman may be authorized by a majority of the members sitting at the time the alleged offense is committed, to cause a proceeding for contempt to be filed and prosecuted in the court of common pleas of any county under sections 2705.03 to 2705.09, inclusive, of the Revised Code."

As to the immunity of a witness who testified, Section 101.44 R. C., says:

"Except a person who, in writing, requests permission to appear before a committee or subcommittee of the general assembly, or of either house thereof, or who, in writing, waives the rights, privileges, and immuni-

ties granted by this section, the testimony of a witness examined before a committee or subcommittee shall not be used as evidence in a criminal proceeding against such witness, nor shall a person be prosecuted or subjected to a penalty or forfeiture on account of a transaction, matter, or thing, concerning which he testifies, or produces evidence. This section does not exempt a witness from the penalties for perjury."

As to acts in contempt, Section 2705.02 R. C., says in part:

"A person guilty of any of the following acts may be punished as for a contempt:

(C) A failure * * * to answer as a witness, when lawfully required."

As to the trial and penalty, Section 2705.05 R. C., says:

"Upon the day fixed for the trial in a contempt proceeding the court shall investigate the charge, and hear any answer or testimony which the accused makes or offers.

"The court shall then determine whether the accused is guilty of the contempt charge. If it is found that he is guilty, he may be fined not more than five hundred dollars, or imprisoned not more than ten days, or both."

Although in similar cases in Ohio involving the failure or refusal of witnesses to testify before the Un-American Activities Commission, the Common Pleas Courts of the counties of Summit, Franklin, Hamilton and this Court have been at some variance as to the procedure to follow in preferring the charges, all of these courts, including this court, have been in agreement in sustaining the legality of the Commission and its right and power to subpoena witnesses, have them sworn and testify to the matters set forth in Section 103.34 R. C., and such addi-

tional rights and powers of the Commission to accomplish its lawful objectives and purposes.

This Court in the instant cases also holds that the Commission was legally constituted at the hearings held on October 21, 1953, to which the defendants were duly subpoenaed and that the defendants were duly sworn to testify.

This Court also holds that these defendants are properly before this Court on indictments duly presented by a grand jury of this County charging that said defendants did unlawfully refuse to testify at the aforesaid hearing to matters regarding which they could be lawfully interrogated and be lawfully required to answer.

This Court further holds that the defendants were legally bound to testify to any matters regarding which they might be lawfully interrogated and to answer as witnesses when lawfully required, and a refusal to do so would make them guilty of contempt provided:

1. That the question propounded either was preliminary to the matter under inquiry or was relevant to the accomplishment of the lawful objectives and purposes of Section 103.34 R. C.

2. That the defendants intentionally, deliberately and with full knowledge of the consequences, refused to answer so as to show a contumacious conduct upon their part.

3. That the defendants' testimony in answer to the interrogatories could not be used as evidence in any criminal proceeding against them in the event their testimony might be self-incriminating. That is, that they were granted complete immunity as witnesses.

As to No. 3, this Court holds that Section 101.44 R. C., granted the defendants complete immunity and that any

protection of the Fifth Amendment of the United States Constitution and Section 10, Article 1, of the Ohio Constitution, or any other parts of these constitutions, are therefore, not available to the defendants. The record shows that these five defendants were all present at the hearing together with their counsel and that each could hear the counsel for the Commission explain the question of immunity and claim of privilege (p. 7).

As to No. 2, this Court holds that the defendants had such intention and knowledge and still exhibited contumacious conduct in refusing to answer. Starting with the first witness, Olga Perry, the chairman made it clear that the witnesses were required and ordered to answer. (pp. 8, 9, etc.) No particular or specific ritual is required to put a witness in contempt. The entire record contains sufficient evidence to support a finding that each defendant deliberately and intentionally refused to answer. The evidence is ample that each defendant was made well aware that the Commission desired answers to its questions despite the grounds they advanced in refusing. These are not cases where out of dozens of questions a witness refuses to answer one or two questions under claim of privilege, etc., in which event an order to answer might be required.

This brings us to No. 1, which involves each question in each count of the indictments. The Court shall consider same as to each defendant separately.

Le Vernne Slagle

First Count. There are two questions involved in this question: first, whether defendant was chairman of the Peace Mobilization Committee, and, second, was it Communist-dominated. Thus the question was so called "double-barrelled" and improper. Not guilty.

Second Count. Two questions again: first, was he active in the North Side Peace League, and, second, did the Communist party set it up. Not guilty.

Third to tenth count inclusive—guilty each count.

Paul Bohus

First Count. Time referred to—years 1932 to 1935. (p. 37.) Guilty.

Second to Fifth count inclusive. Guilty each count.

Sixth Count. Refers to the commission of a criminal act in the future. Not Guilty.

Seventh Count. Guilty.

Eighth Count. Time referred to—year 1940 (p. 45). Guilty.

Ninth Count. Guilty.

Tenth Count. Refers to a possible event of the future, and question also is too vague. Not Guilty.

Olga Perry

First Count. Might go to the question of whether or not she was using an assumed name. Guilty.

Second Count. Question not relevant—would make no difference what the names were. Not Guilty.

Third, Fourth and Fifth Counts. Guilty each count.

Sixth Count. Question too vague. Not guilty.

Seventh and Eighth Counts. Guilty each count.

Ninth Count. Word "she" refers to Eva Nemeth. (p. 24.) Guilty.

Tenth Count. Refers to a possible event of the future, and question also is too vague. Not Guilty.

Eula Ann Cooper

First, Second and Third Counts. Guilty each count.

Fourth Count. Time refers to prior to September 1948. (p. 78.) Guilty.

Fifth Count. Guilty.

Sixth Count. Might go to the question of using an assumed name. Guilty.

Seventh, Eighth and Ninth Counts. Guilty each count.

Tenth Count. Refers to a possible event of the future, and also is too vague. Not Guilty.

Rose Mladajan

First to Seventh Count inclusive. Guilty each count.

Eighth Count. Refers to November 2, 1952—a fund raising meeting for the Progressive Party. Guilty.

Ninth Count. Too general a question and also is vague. Not Guilty.

Tenth Count. Guilty.

APPENDIX C.

Judgment of the Supreme Court of Ohio.

December 23, 1959.

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Stark County as upon the motion of the appellee to dismiss the appeal, filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, sua sponte dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellee recover from the appellants its costs herein expended, taxed at $_____.

ORDERED, That a special mandate be sent the Court of Common Pleas of Stark County, to carry this judgment into Execution.

ORDERED, That a copy of this entry be certified to the Clerk of the Court of Appeals of Stark County, "for entry."

(Duly certified.)